IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1839 of 1983

WITH

FIRST APPEAL No. 1332 of 1984

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJ STATE ROAD TRANSPORT CORPN - Appellant(s)
Versus
ZAMIRKHAN KISHORKHAN PATHAN & 1 - Defendant(s)

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Appearance :
MS JYOTI MEHTA for GSRTC,
MR SUNIL MEHTA for Zamirkhan K Pathan, in each of the appeal,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 03/07/2007

ORAL JUDGMENT

1. Heard Ms.Jyoti Mehta, learned counsel for the Gujarat State Road Transport Corporation and Mr.Sunil Mehta,

under the authority of Mr.S.K. Bukhari, learned counsel for the claimant – Zamirkhan Kishorkhan Pathan.

2. The parties, being aggrieved by the impugned Award dtd.31/12/1982 passed by the Motor Accident Claim Tribunal (main), Surat in Motor Accident Claim Petition No.86 of 1982, are before this Court. Gujarat State Road Transport Corporation has filed First Appeal No.1839 of 1983 seeking deduction by a sum of Rs.22,590=00, while the original claimant – Zamirkhan Kishorkhan Pathan has filed first Appeal No.1332 of 1984 seeking an additional amount of Rs.25,000=00.

3. It is to be noted that the Gujarat State Road Transport Corporation is not challenging the findings recorded by the learned Tribunal in relation to the accident, their liability, nature of the injuries suffered by the claimant, under the circumstances, the only question to be considered by this Court would be that what should be the reasonable amount to be awarded to the original claimant.

4. The learned counsel for the ST Corporation after taking me through the evidence, has submitted that according to the Doctor, the disability was to the extent of 80%, while, in fact, it should have been calculated to the

extent of 60% and the tribunal could not have awarded future pecuniary loss of income at Rs.6=00 per day nor was it justified in awarding a sum of Rs.10,000=00 under the head of pain, shock and suffering etc.

5. On the other hand, learned counsel for the claimant submits that the claimant was a cart puller and if his right hand had to be amputated from 6 inch below the right shoulder, then it would almost become impossible for the claimant to work as a cart puller. According to him, looking to the vocation of the claimant, loss of one hand would amount to 100% disability.

6. From the statement of the Doctor, it would appear that the claimant can pull the handcart with the help of left hand and by force of his body, but at the same time, the Doctor says that the claimant would find it difficult to lift weight. Even otherwise, it is to be seen that if a person loses his right hand, then, it would be difficult for him to pull the hand cart or lift the weight, which are too essential for handcart puller. In the present case, looking to the circumstances, I must hold that the claimant suffered 100% disability. Even if miser's approach is taken and the findings of the tribunal that the claimant could earn Rs.10=00 per day, then, the loss of the future

income would be Rs.300=00 per month or Rs.3600=00 per year, applying multiplier of 15, total loss must be assessed at Rs.54,000=00. The tribunal had awarded a sum of Rs.32,400 only. In the opinion of this Court, the claimant namely Zamirkhan Kishorkhan Pathan would be entitled to an additional sum of Rs.21,600=00 under the head of future pecuniary loss. Under the head of pain, shock and suffering, expectancy of the life and future enjoyment of the life, the claimant named – Zamirkhan Kishorkhan Pathan must be held further entitled to a sum of Rs.3400=00.

7. In view of the above findings and calculation, First Appeal No.1832 of 1983 filed by the claimant namely – Zamirkhan Kishorkhan Pathan, is allowed to the extent extent indicated above, in additional to what has been awarded by the tribunal, he would be entitled to Rs.25,000=00 with interest at the rate of 6% per annum from the date of the claim petition till recovery. First Appeal No.1839 of 1983 filed by the Gujarat State Road Transport Corporation is dismissed. Interim relief if any, is vacated. No costs.

(R.S. GARG, J.)

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